



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0198]**

**RIN 1625-AA00**

### **Safety Zones; Recurring Safety Zones in Captain of the Port Sault Sainte Marie Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its recurring safety zones regulations in the Captain of the Port Sault Sainte Marie Zone. This proposed rule would update eighteen safety zone locations, dates, and sizes, add three safety zones, remove two established safety zones, and reformat the regulations into an easier to read table format. These proposed amendments will protect spectators, participants, and vessels from the hazards associated with annual marine events and firework shows, and improve the clarity and readability of the regulation. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0198 using the Federal eRulemaking Portal at <http://www.regulations.gov>. Type the docket number (USCG-2018-0198) in the "SEARCH" box and click "SEARCH." See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further

instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Sean V. Murphy, Chief of Waterways Management, Coast Guard Sector Sault Sainte Marie, U.S. Coast Guard; telephone 906-635-3223, email Sean.V.Murphy@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On April 18, 2011 the Coast Guard published an NPRM in the Federal Register (76 FR 21677) entitled “Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Sault Sainte Marie Zone.” The NPRM proposed to establish 20 permanent safety zones for annually recurring events in the Captain of the Port Sault Sainte Marie Zone under § 165.918. The NPRM was open for comment for 30 days.

On June 2, 2011 the Coast Guard published the Final Rule in the Federal Register (76 FR 31839), after receiving no comments on the NPRM. Since that time there have been changes to the events that were listed in the Final Rule and additional annual events have been established. Through this proposed rule the Coast Guard seeks to update §165.918 to reflect the current status of recurring marine events in the Captain of the Port Sault Sainte Marie Zone.

The legal basis for this proposed rulemaking is found at 33 U.S.C. 1231; 50 U.S.C. 191;

33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

### **III. Discussion of Proposed Rule**

The Captain of the Port Sault Sainte Marie (COTP) has determined that an amendment to the recurring safety zones list as published in 33 CFR 165.918 will be necessary to: update the location, date, and size of eighteen existing safety zones (Marquette Fourth of July Celebration Fireworks, Munising Fourth of July Celebration Fireworks, Sault Sainte Marie Fourth of July Celebration Fireworks, Mackinac Island Fourth of July Celebration Fireworks, Harbor Springs Fourth of July Celebration Fireworks, Bay Harbor Yacht Club Fourth of July Celebration Fireworks, Petoskey Fourth of July Celebration Fireworks, Boyne City Fourth of July Celebration Fireworks, Alpena Fourth of July Celebration Fireworks, Charlevoix Venetian Festival Friday Night Fireworks, Charlevoix Venetian Festival Saturday Night Fireworks, Elk Rapids Harbor Days Fireworks, Jordan Valley Freedom Festival Fireworks, Canada Day Celebration Fireworks, Festival of Fireworks Celebration Fireworks, Grand Marais Splash In, National Cherry Festival Airshow, and National Cherry Festival Finale Fireworks), establish three safety zones (Mackinaw Area Visitors Bureau Friday Night Fireworks, Nautical City Fireworks, and Traverse City Fourth of July Celebration Fireworks), remove National Cherry Festival Fourth of July Celebration Fireworks and St. Ignace Fourth of July Celebration Fireworks safety zones, and format the existing regulations into a table format. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled events and to improve the overall clarity and readability of the rule. The regulatory text we are proposing appears at the end of this document.

The amendments to this proposed rule are necessary to ensure the safety of vessels and people during annual events taking place on or near federally maintained waterways in the Captain of the Port Sault Sainte Marie Zone. Although this proposed rule will be in effect year-round, the specific safety zones listed in Table 165.918 will only be enforced during a specified period of time.

When a Notice of Enforcement for a particular safety zone is published, entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie, or his or her designated representative. The Captain of the Port Sault Sainte Marie or his or her designated representative may be contacted via VHF Channel 16 or telephone at 906-635-3319. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day for each safety zone. Vessel traffic will be able to safely transit around all safety zones which will impact small designated areas within the COTP zone for short durations of time. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal

agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the update of eighteen safety zone locations, dates, and sizes, the addition of three safety zones, the removal of two safety zones, and the reformatting of regulations into an easier to read table format. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**



1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.918 to read as follows:

§ 165.918 Safety Zones; Recurring Safety Zones in Captain of the Port Sault Sainte Marie.

(a) Regulations. The following regulations apply to the safety zones listed in Table 165.918 of this section:

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within any of the safety zones listed in this section is prohibited unless authorized by the Captain of the Port Sault Sainte Marie, or a designated representative.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) When a safety zone established by this section is being enforced, all vessels must obtain permission from the Captain of the Port Sault Sainte Marie or a designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(b) Suspension of Enforcement. If the event concludes earlier than scheduled, the Captain of the Port Sault Sainte Marie or a designated representative will issue a Broadcast Notice to Mariners notifying the public that enforcement of the respective safety zone is suspended.

(c) Exemption. Public vessels, defined as any vessel owned or operated by the United States or by State or local governments, operating in an official capacity are exempted from the requirements of this section.

(d) Waiver. For any vessel, the Captain of the Port Sault Sainte Marie or a designated representative may, at his or her discretion, waive any of the requirements of this section, upon finding that circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

(e) Contacting the Captain of the Port. While a safety zone listed in this section is enforced, the Captain of the Port Sault Sainte Marie or a designated representative may be contacted via VHF Channel 16 or telephone at (906) 635-3319. Vessel operators given permission to enter or operate in a safety zone must comply with all directions given to them by the Captain of the Port Sault Sainte Marie, or a designated representative.

(f) Notice of Enforcement. The Coast Guard will provide advance notice of the enforcement including specific date, time, and size of the safety zone being enforced in Table 165.918, by issuing a Notice of Enforcement, as well as, a Broadcast Notice to Mariners.

TABLE 165.918  
[Datum NAD 1983]

Event	Location	Event Date
(1) Mackinaw Area Visitors Bureau Friday Night Fireworks; Mackinaw City, MI.	All U.S. navigable waters of the Straits of Mackinac within an approximate 1000-foot radius from the fireworks launch site located in position 45°46'35.48"N, 084°43'16.20"W.	Friday nights between late May and early September.
(2) Jordan Valley Freedom Festival Fireworks; East Jordan, MI.	All U.S. navigable waters of Lake Charlevoix, near the City of East Jordan, within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site in position 45°09'18" N, 085°07'48" W.	This event historically occurs in mid to late June.

(3) Grand Marais Splash In; Grand Marais, MI.	All U.S. navigable waters within the southern portion of West Bay bound within the following coordinates: 46°40'22.08"N 085°59'0.12"W, 46°40'22.08"N, 85°58'22.08"W, and 46°40'14.64"N, 85°58'19.56"W, with the West Bay shoreline forming the South and West boundaries of the zone.	This event historically occurs mid to late June.
(4) Fireworks Over the Bay!; St. Ignace, MI.	All U.S. navigable waters of East Moran Bay within an approximate 1000-foot radius from the fireworks launch site at the end of the Starline Mill Slip, centered in position: 45°52'24.62" N, 084°43'18.13" W.	On or around July 4 <sup>th</sup> and Saturdays beginning late June to early September.
(5) National Cherry Festival Airshow Safety Zone; Traverse City, MI.	All U.S. navigable waters of the West Arm of Grand Traverse Bay within a box bounded by the following coordinates: 44° 46'51.6"N 085° 38'15.6"W, 44° 46'23.4"N 085°38'22.8"W, 44°46'30.00"N 085°35'42.00"W, and 44°46'2.34"N 085°35'50.4"W.	This event historically occurs late June or early July.
(6) National Cherry Festival Finale Fireworks; Traverse City, MI.	All U.S. navigable waters of the West Arm of Grand Traverse Bay within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located on a barge in position 44°46'12" N, 085°37'06" W.	This event historically occurs late June or early July.
(7) Canada Day Celebration Fireworks; Sault Sainte Marie, MI.	All U.S. navigable waters of the St. Marys River within an approximate 1400-foot radius from the fireworks launch site, centered approximately 160 yards north of the U.S. Army Corp of Engineers Soo Locks North East Pier, at position 46°30'20.40" N, 084°20'17.64" W.	On or around July 1.
(8) Marquette Fourth of July Celebration Fireworks; Marquette, MI.	All U.S. navigable waters of Marquette Harbor within an approximate 1200-foot radius of the fireworks launch site, centered in position 46°32'23.0" N, 087°23'13.1" W.	On or around July 4 <sup>th</sup> .
(9) Munising Fourth of July Celebration Fireworks; Munising, MI.	All U.S. navigable waters of South Bay within an approximate 800-foot radius from the fireworks launch site at the end of the Munising City Dock, centered in position: 46°24'50.08" N, 086°39'08.52" W.	On or around July 4 <sup>th</sup> .
(10) Sault Sainte Marie Fourth of July Celebration Fireworks; Sault Sainte Marie, MI	All U.S. navigable waters of the St. Marys River within an approximate 1000-foot radius around the eastern portion of the U.S. Army Corp of Engineers Soo Locks North East Pier, centered in position: 46°30'19.66" N, 084°20'31.61" W.	On or around July 4 <sup>th</sup> .
(11) Mackinac Island Fourth of July	All U.S. navigable waters of Lake Huron within an approximate 750-foot radius of the fireworks	On or around July 4 <sup>th</sup> .

Celebration Fireworks; Mackinac Island, MI.	launch site, centered approximately 1000 yards west of Round Island Passage Light, at position 45°50'34.92" N, 084°37'38.16" W.	
(12) Harbor Springs Fourth of July Celebration Fireworks; Harbor Springs, MI.	All U.S. navigable waters of Lake Michigan and Harbor Springs Harbor within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located on a barge in position 45°25'30" N, 084°59'06" W.	On or around July 4 <sup>th</sup> .
(13) Bay Harbor Yacht Club Fourth of July Celebration Fireworks; Petoskey, MI.	All U.S. navigable waters of Lake Michigan and Bay Harbor Lake within the arc of a circle with an approximate 750-foot radius from the fireworks launch site located on a barge in position 45°21'50" N, 085°01'37" W.	On or around July 4 <sup>th</sup> .
(14) Petoskey Fourth of July Celebration Fireworks; Petoskey, MI.	All U.S. navigable waters of Lake Michigan and Petoskey Harbor, in the vicinity of Bay Front Park, within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located in position 45°22'40" N, 084°57'30" W.	On or around July 4 <sup>th</sup> .
(15) Boyne City Fourth of July Celebration Fireworks; Boyne City, MI.	All U.S. navigable waters of Lake Charlevoix, in the vicinity of Veterans Park, within the arc of a circle with an approximate 1400-foot radius from the fireworks launch site located in position 45°13'30" N, 085°01'40" W.	On or around July 4 <sup>th</sup> .
(16) Alpena Fourth of July Celebration Fireworks; Alpena, MI.	All U.S. navigable waters of Lake Huron within an approximate 1000-foot radius of the fireworks launch site located near the end of Mason Street, South of State Avenue, at position 45°02'42" N, 083°26'48" W.	On or around July 4 <sup>th</sup> .
(17) Traverse City Fourth of July Celebration Fireworks; Traverse City, MI.	All U.S. navigable waters of the West Arm of Grand Traverse Bay within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located on a barge in position 44°46'12" N, 085°37'06" W.	On or around July 4 <sup>th</sup> .
(18) Charlevoix Venetian Festival Friday Night Fireworks; Charlevoix, MI.	All U.S. navigable waters of Lake Charlevoix, in the vicinity of Depot Beach, within the arc of a circle with an approximate 1200-foot radius from the fireworks launch site located on a barge in position 45°19'08" N, 085°14'18" W.	This event historically occurs in late July.
(19) Charlevoix Venetian Saturday Night Fireworks; Charlevoix, MI.	All U.S. navigable waters of Round Lake within the arc of a circle with an approximate 500- foot radius from the fireworks launch site located on a barge in position 45°19'03" N, 085°15'18" W.	This event historically occurs in late July.
(20) Elk Rapids Harbor Days Fireworks; Elk Rapids, MI.	All U.S. navigable waters within the arc of a circle with an approximate 750-foot radius from the fireworks launch site located on a barge in	This event historically occurs in early

	position 44°54'6.95"N 85°25'3.11"W.	August.
(21) Nautical City Fireworks; Rogers City, MI.	All U.S. navigable waters within the arc of a circle with an approximate 750-foot radius from the fireworks launch site located near Harbor View Road in position 45°25'04.72"N 83°47'51.21"W.	Early August.

Dated: March 16, 2018

M. R. Broz,  
Captain, U.S. Coast Guard,  
Captain of the Port Sault Sainte Marie

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